

PUBLIC LAW BOARD NO. 1634

Award No. 9
Case No. 19
File No. 7785-854

Parties United Transportation Union (1)

to and

Dispute Norfolk and Portsmouth Belt Line Railroad Company

Statement of Claim: "Request of Local Committee, UTU, that record of Marvin DeWitt Booker be cleared of 10 days record suspension for the following alleged offense: 'Responsibility in connection with accident which occurred at approximately 10:40 p.m. March 24, 1975, when placing loaded equipment on Cargill Grain Elevator Inbound Track, resulting in damage to equipment, tracks and personal injury sustained by three (3) employees of Cargill Grain Elevator.'"

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 24, 1975, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant, on March 24, 1975, was assigned as Conductor on Crew 124 with hours 3:45 p.m. to 11:45 p.m. About 10:40 p.m., Crew 124 while shoving 23 cars loaded with grain, blind, into Cargill Grain Elevator unloading facility, collided with nine loaded cars which were then being dumped by Cargill employees. Three of such employees were injured, two cars damaged and the rail at the point of impact rolled over. As a result of an investigation conducted on March 27, 1975, Claimant was assessed ten (10) days record suspension.

The record reflects that collision occurred because a crew member was not assigned to the leading car as required by Operating Rule 103, because the crew operated by "practice." All the crew members were not placed in positions most advantageous to the protection of the movements involved in the collision. The circumstances were obviously not the same and the contradiction between an assertion and a fact was clearly emphasized by the collision occurring on a track stated by Claimant to be "apparently" clear.

While Claimant might otherwise be guilty on such a record, it cannot be

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used here. The discipline imposed was vitiated by the Hearing Officer's refusal to listen or permit witness F. A. Booker, Sr., to testify. The judgment of whether such testimony is relevant to the purpose for which the investigation is held is better determined after it has been at least partially if not fully heard. Here, however, the denial to not permit such witness of 31 years service and who worked a Cargill assignment for many years to testify is construed to be a denial of Claimant's basic right to have witnesses on his behalf. It was an arbitrary decision which causes the Board to sustain the claim herein.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

Fred A. Hardin
Fred A. Hardin, Employee Member

F. S. Morrison
F. S. Morrison, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman and Neutral Member

Issued at Atlanta, Georgia, November 8, 1977.

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